Supreme Court, U.S.
FILED
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No. 89-98

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

HAROLD DAVIS and ENID DAVIS,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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JOINT APPENDIX

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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs

v.

UNITED STATES OF AMERICA,
Defendant

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1985		
July 15	1	COMPLAINT. —Issued Summons
Aug 9	2	Summons—U.S. Atty 7/24/85; Atty General 7/23/85; District Director IRS 7/22/85
Sep 13	3	Answer
1986		
Apr 2	4	Minutes—Status Conf.—matter continued to 7/1; parties to notify by that date if settled or not (MJC)
" "	5	Status Conference Order (MJC) cc:Attys
Dec 15	6	Application of Plfs for Admission Pro Hac Vice of Wilford W. Kirton, Jr., Raeburn G. Kennard, & Robart P. Lunt of KIRTON, McCONKIE and BUSHNELL
" "	7	Consent of Resident Attorney, Bart M. Davis
Dec 16	8	Order admitting Attys Kirton, Kennard and Lunt (MJC) cc:Attys

DATE	NR.	PROCEEDINGS
1987		
Mar 30	9	MOTION of Def for S.J. with attached Statement of Material Facts and Memo (in file on left)
Apr 13	10	Motion of Plfs to Enlarge Time for reply to Def's Motion for S.J.
Apr 17	11	Order granting Plf leave to file its Reply to Def's motion for S.J. and own motion for S.J., supporting affidavits & Memorandum no later than 5/11/87 (MJC) cc:Attys
May 7	12	CROSS MOTION of Plfs for S.J.
" "	13	Statement of Material Facts
" "	14	Affidavit of Elder Robert L. Backman
" "	15	Affidavit of Harold Davis
" "	16	Memo in support
" "	17	Certificate of Service
Jun 10	18	Reply of Def to Plfs' Opp. to Motion for S.J. and Opposition to Plfs' Motion for S.J.
Jun 17	19	Certificate of Mailing of Plfs re Reply to U.S. opposition to Plf's Motion for S.J. and Affidavit of Cecil Davis
" "	20	Affidavit of Cecil Davis
" "	21	Order—case to be reassigned to another District Judge unless parties consent to having case heard before U.S. Magistrate (MJC) cc:Attys
" "	—	Mailed Consent Form with letter
Jun 22	22	Reply of Plfs to Defs' Opp. to Plfs' Motion for S.J.

DATE	NR.	PROCEEDINGS
1987		
Jul 9	23	MINUTE ENTRY—Cross Motions for S.J. & Motion of Plf to allow Mr. Kirton as out of state counsel; Cross-Motions for S.J. under advisement (HLR)
Jul 15	24	MEMORANDUM OPINION AND ORDER granting def's Motion for S.J.; Denying plfs' Cross Motion for S.J. (HLR)
" "	25	JUDGMENT that plfs take nothing against the def and that this action action be dismissed with prejudice (HLR) cc: attys Book 31, Page 154
Sep 11	26	NOTICE OF APPEAL by Plfs Harold and Enid Davis, from judgment of 7/15/87
' 14	—	Certificate of Mail of Appeal to 9th Circuit and attys of record. Also sent copy of docket entries and other pertinent papers.
Sep 18	—	sent copy of notice of appeal, copy of docket entries and reporter's transcript ordering form to Wilford W. Kirton, Jr., 330 South Third East, Salt Lake City, UT 84111-2599

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Case No.: CIV 85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs,

—vs—

THE UNITED STATES OF AMERICA,
Defendant.

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiffs are husband and wife and reside at 1451 S. Woodruff, in the City of Idaho Falls, County of Booneville, State of Idaho. Defendant is the United States of America.

2. This action arises under the provisions of Title 28, Section 1346(a)(1) of the United States Code and Title 26, Section 7422, of the United States Code (I.R.C. § 7422).

3. The Plaintiffs timely filed their income tax returns (Forms 1040) for taxable years 1980 and 1981 with the Internal Revenue Service's Ogden, Utah Service Center. The income tax liability with respect to those taxable years was paid by Plaintiffs as follows:

Year	Tax Withheld	Tax Paid With Return	Total Tax Liability
1980	$21,032.38	$3,553.50	$24,585.88
1981	$21,377.71	$ 664.30	$22,041.47

4. As appears more fully herein, Plaintiffs erred in executing such tax returns and such payments of $24,585.88 for taxable year 1980 and $22,041.47 for taxable year 1981 represent an overpayment of taxes by Plaintiffs as follows:

Year		Overpayment
1980		$1,779.71
1981		$2,613.10
	TOTAL	$4,392.81

5. Plaintiffs erred in executing their income tax returns for the taxable years 1980 and 1981 in that they failed to claim certain items of charitable contributions on Schedule A of their income tax returns for each of the above mentioned years in the following amount.

Year	Amount of Charitable Contributions
1980	$3,480.89
1981	$4,882.00

6. The above-mentioned charitable contributions were in the nature of direct payments for the cost of necessary travel and living expenses of a dependent member of Plaintiffs' household who was serving as a full-time church missionary for The Church of Jesus Christ of Latter-day Saints and which payments directly and primarily furthered and served the aims of said charitable organization.

7. On or about April 15, 1984, Plaintiffs filed with the Internal Revenue Service Center in Ogden, Utah, amended income tax returns (Forms 1040x) for the taxable years 1980 and 1981 and a claim for a refund of the excessive income taxes erroneously collected. On or about April 12, 1985, Plaintiffs received from the Commissioner of Internal Revenue notices of disallowance of their claims. Copies of those notices of disallowance are attached hereto,

marked as Exhibit "A" and Exhibit "B" respectively, and made a part hereof.

8. No part of the sum of $4,392.81, the amount of tax overpaid by Plaintiffs, has been refunded to them.

WHEREFORE, Plaintiffs aver that they are entitled to recover their overpayment in taxes from the Defendant in the amount of $4,392.81, together with interest, costs of suit and attorney's fees and prays the Court to grant the same, and demands a jury to try their case, and prays further for such other and further relief as to this Court may seem proper.

DATED this 12th day of July, 1985.

/s/ Michael J. Sheeley
MICHAEL J. SHEELEY

STATE OF IDAHO)
) ss
COUNTY OF BONNEVILLE)

HAROLD DAVIS and ENID DAVIS, being first duly sworn, depose and say:

That we are the Plaintiffs in the foregoing action, that we have read the within Complaint, know the contents thereof and that the same is true and correct as we verily believe.

/s/ Harold Davis
HAROLD DAVIS

/s/ Enid Davis
ENID DAVIS

SUBSCRIBED AND SWORN to before me this 9th day of May, 1985.

/s/ _____
Notary Public for Idaho
Residing at Idaho Falls
Commission Expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

No. CIV 85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

ANSWER OF UNITED STATES

The United States of America answers the complaint filed in this case by denying each and every allegation except as is specifically admitted in the following:

1, 2 and 3. The United States admits the allegations of paragraphs 1, 2 and 3 of the complaint.

4 and 5. The United States denies the allegations of paragraphs 4 and 5 of the complaint.

6. The United States denies the allegations of paragraph 6 for lack of knowledge.

7. The United States admits the allegations of paragraph 7 of the complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

This Statement of Material Facts is submitted in compliance with this Court's local Rule 6-106 to supplement the facts set forth in Defendant's Statement of Material Facts filed on or about March 27, 1987. Plaintiffs do not disagree with Defendant's statement except that it was incomplete and paragraph 32 needs to be clarified (neither missionary *used* any source of funds other than their parents', but the Church missionary fund was *available*). The material facts which were omitted from the Defendant's statement are set out as follows:

1. The President of The Church of Jesus Christ of Latter-day Saints has characterized the missionary program as one of the three primary areas of Church activity.

2. The Church will pay for food, lodging, transportation, religious materials, etc. if the missionary does not pay for them himself or receive adequate funds directly from another donor in accordance with the Church's request and instructions.

3. Most missionaries are individuals between the ages of nineteen and twenty-two years, many of whom receive the necessary funds to meet minimal mission expenses from their parents at the request of the Church.

4. The Church encourages every young man to make himself worthy for a mission and every worthy young man is encouraged to be prepared to accept a call to serve on a mission at nineteen years of age.

5. The Church has strict standards for missionaries regarding moral worthiness, desire, testimony, physical fitness, mental fitness, emotional fitness, willingness to obey Church authorities in all matters, desire to serve the Church and others, attitude, willingness to work, etc.

6. If the Church determines that a candidate is qualified to become a missionary, it will send a letter, bearing the signature of the President of the Church, calling the applicant to go on a mission for the Church and requesting the applicant to accept or reject the call in writing. This letter also informs the candidate of the geographical area (selected by the Church) to which the candidate will be sent.

7. If the candidate accepts the call, appropriate priesthood ordinances are performed and the missionary is set apart for his calling by local Church officials.

8. Prior to each mission the Plaintiffs had notified their bishop that they would provide the funds requested by the Church to meet the mission expenses of both Benjamin and Cecil. It was understood that each Mission President would retain authority to adjust the monthly amount requested of the Plaintiffs to reflect changes in costs or changes in the missionary's circumstances, such as use of a car or assignment to higher or lower cost of living areas.

9. Neither Benjamin's nor Cecil's selection was, however, conditioned upon the Plaintiff's agreement to provide the necessary finances in response to the Church's

request. The Plaintiffs were aware that if they failed to assist the missionary program the Church would provide the necessary money by either locating another donor or using money donated to the missionary funds maintained by both the Plaintiffs' ward and stake.

10. The Plaintiffs' primary motivation was to assist the Church's missionary program in accordance with Church practice and policies. They did not expect, and did not receive, any pecuniary benefit from their payments of mission related expenses.

11. Each missionary received a letter from the Missionary Department of the Church which set out the amount of money which would be needed to obtain each missionary's service.

12. During their missionary service, their Mission President had almost total control over their life, including their manner and style of dress, grooming, proselyting and study schedules, and use of time for other activities. Mission rules included a ban on dating, movies, plays, certain sports and various other activities.

13. The missionary's basic daily schedule as set out on pages 15 and 16 of the Missionary Handbook is as follows:

RECOMMENDED DAILY SCHEDULE

The recommended daily schedule is as follows:

6:30 a.m.	Arise
7:00 a.m.	Study Class
8:00 a.m.	Breakfast
8:30 a.m.	Personal Study
9:30 a.m.	Proselyte
12:00 p.m.	Lunch
1:00 p.m.	Proselyte
5:00 p.m.	Dinner
6:00 p.m.	Proselyte
9:30 p.m.	End proselyting—plan tomorrow's activities
10:30 p.m.	Retire—this is a must

14. Both Benjamin and Cecil presented themselves full-time, in public and in private as ministers of the Church. Both of them were viewed as ministers by the public in the communities where they served. Their principal activity for 60-70 hours per week for the full terms of their respective missions consisted of devoted missionary service to their Church and to individuals and families.

15. Missionaries are not allowed to take vacations or travel for personal purposes, and neither Benjamin nor Cecil took a vacation or traveled for personal purposes while on their missions.

16. If parents or any other individual member is paying the costs incident to a specific missionary's service, the Church prefers the donor to transfer the necessary funds to the personal checking account of the missionary unless a different method of transfer is requested by the Mission President in order to meet specific needs or problems in a local mission.

17. The plaintiffs' transfer of the aforesaid funds to the personal checking account of each missionary was in accordance with the instructions of the Church.

18. The Church believes that the direct transmittal of money to the missionary results in several specific benefits to the Church, which it regards as important. In particular, the Church concludes that having the member donate money while the missionary donates service in order to carry out the work of the Lord (each being aware of the other's part), fosters the Church doctrine of sacrifice and consecration in the lives of its people. The Church has found that it helps to strengthen and build the family, the primary unit of the Church. The Church has also found that direct transmittal assists the Church in minimizing the expenses of its missionaries because the missionaries are more frugal when they are aware of the personal sacrifice which is made by the donor in order to assist in the Lord's missionary work.

The Church finds that knowing who bears the financial burden helps remind the missionary that the mission is intended as a period of dedication, service and sacrifice and is not intended as a means of livelihood. Direct transmission of funds, in the amounts requested by the Church, also reduces the substantial administrative and bookkeeping requirements which would otherwise be imposed upon the Church, thereby preserving the Church's resources for additional charitable and religious activities.

19. Missionaries are not free to do whatever they like with the funds received for mission-related expenses. Although it is not practical for missionaries to obtain specific approval for each expenditure they make from their personal checking account, the limited amounts available effectively limit their expenditures to mission essentials. Furthermore, missionaries receive specific instructions with respect to the expenditures of these donated funds. For example, page 29 of the Missionary Handbook provides:

> The money you receive for your support is sacred and should be spent wisely and only for missionary work. Keep expenses at a minimum. . . . Keep a financial record of all expenditures.

These restrictions are repeated in the instructions received at the MTC and again from time to time by Mission Presidents to the missionaries under their supervision.

20. The missionaries had made a commitment with the plaintiffs to use the money for which a deduction is claimed only in accordance with the Church's instructions.

21. The Church does not want missionaries to receive missionary expense money or other charitable contributions from third parties other than those (usually the family) whom the Church has requested to provide financial assistance.

22. If for any reason expected contributions are not forthcoming from the anticipated sources, the Church assumes the burden of locating other sources of contribution to continue uninterrupted funding of the missionary program. Such additional sources may include other members of the local congregation from which the missionary comes, specific donors from other parts of the Church, or use of Church general missionary funds.

23. The selection of a missionary is not conditioned upon the willingness of any one individual to provide sufficient financial support to the Church program. Although the missionary is welcome to assist the Church officials in finding adequate sources of financial support, Church officials assume ultimate responsibility to locate financial support for every worthy candidate by soliciting contributions from local congregation members, members of other congregations, or seeking general Church missionary funds.

DATED this —— day of May, 1987.

Attorneys for Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

AFFIDAVIT OF CECIL DAVIS

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The undersigned affiant, Cecil Davis, having first been duly sworn, hereby affirms to the Court as follows:

1. I am a son of the plaintiffs, Harold and Enid Davis.

2. During 1981 the plaintiffs provided support for me at Brigham Young University and at their home until I entered the Missionary Training Center of The Church of Jesus Christ of Latter-Day Saints ("Church") on or about June 11, 1981. For the balance of the year I served as a missionary under the control and direction of the Church.

3. The plaintiffs supported me during 1981 by providing $485 of tuition for the spring semester (January through April 15) at Brigham Young University, campus room and board during the same period of $770, books in approximately the amount of $150, spending money at school in the amount of $280, and clothing in the amount

of not less than $500. In addition, plaintiffs provided me with food, housing, spending allowance and medical and dental care during two months (including removal of four teeth and other dental work in preparation for my mission), all of which I firmly believe had a value of not less than $1,000, making the total support provided by plaintiffs during 1981 at least $3,185.

4. In addition thereto, I provided not more than $1,035 of my own support from savings and earnings and received $1,418 of support while serving as a missionary on behalf of the Church (the plaintiffs also paid $100 for transportation which I regard as a Church expense and not part of my support) for a total of not more than $2,453 in support provided by or on behalf of parties other than the plaintiffs.

5. Based on the my belief that the foregoing numbers are true and correct. I state that my parents provided not less than $732 more support than I received from all other sources including myself and the Church.

6. I reaffirm statements of my deposition that the mission was voluntary, and that I was not under any compulsion from my parents to serve the Church as a missionary.

7. My primary and overriding motive for serving on the mission was to provide services to my Church in accordance with my religious beliefs and the instructions of the Prophet that every worthy male is to serve a mission.

8. I further state that the amount of money I received from the plaintiffs for attendance at the Missionary Training Center in Provo and while serving on my mission was in accordance with the amount requested by the Church.

IN WITNESS WHEREOF this affidavit is executed under penalties of perjury this 1st day of May, 1987.

/s/ Cecil Davis
CECIL DAVIS
Affiant

SUBSCRIBED AND SWORN TO before me by Cecil Davis on the 1st day of May, 1987.

My Commission Expires:
Sept. 1, 1989

/s/ Ramona R. Mann
Notary Public residing in:
West Valley City, Utah

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil Case No. CIV 85-4106

HAROLD DAVIS and ENID DAVIS,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

DEPOSITION OF
BENJAMIN LAWRENCE DAVIS

November 6, 1986
Thursday—10:20 a.m.
Room 306, Utah County Building
Provo, Utah County, Utah 84601

APPEARANCES

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• • • •

[23] Q Were there any other expenditures of that nature, that you can recall?

A Well, right toward the end of my mission I purchased a camera. But that was the last week I was in the mission field. I wrote home and asked my dad if there was any way I could purchase something else, just so I could say I had purchased something in New York and bring it home. And so he sent me some excess money there.

Q About how much did you spend for food, do you recall?

A I recall we both spent about $20.00—it depended on the companion, as to how much we wanted to eat, of course. But I think it was about $20.00 a week that we both chipped in. So between the two of us we paid about $40.00 together.

Q You paid $40.00 together?

A Yes.

Q So your share was $20.00 a week, approximately?

A Yes.

Q And that varied a little bit, I take it, throughout your mission?

A Yes. There was some months when it was lower, and other months when it was higher.

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[40] MR. LUNT: I had some questions before I left. I don't know whether you have covered it or not.

MR. KIRTON: I don't have any questions.

MR. LUNT: I maybe have a little advantage, because I know somewhat the Church procedure a little bit better.

EXAMINATION

BY MR. ROBERT P. LUNT:

Q When you got your mission call, did you receive a second letter from the Missionary Department—let me

ask you about your mission call. That came from the President of the Church?

A Yes, from the President of the Church. And then I got a letter from the mission president saying, "We welcome you to this mission." And also I think I also received a letter from the mission home here in Provo.

Q So you received letters from the Missionary Department that had both of those letters in it?

A Yes. It indicated what I needed. How many shirts and ties and so forth.

Q So you recall whether or not they indicated how much money would would need to pay for the rent at the mission home?

A Yes.

[41] Q So that letter did have some amount in it—in the second letter? When you said there was no money mentioned, you're talking about the first letter that the Church President sent you, rather than the letter you got from the Missionary Department or a letter that came from the mission president?

Didn't they give you an indication in that letter as to how much per month you would need?

A Yes. It said a range. I'm talking about the mission president in New York. He said it ranged from a certain amount to a certain amount.

Q Did he tell you why it would range a certain amount?

A He said it depended on whether you had a car, or whether you were on a bike, or whether you were in New York or travelling on the subway. He just said it all depended.

Q But they did set amounts that you were to receive, depending upon where you eventually assigned once you got to the mission field?

A Yes.

Q You also said that at least monthly, as I recall your statement, but you didn't remember whether it was

weekly or monthly, but at least monthly, you reported all of your expenditures to the mission president?

A Yes. In fact, what I think it was was weekly. [42] We wrote down what we had spent up to that point, and then after the final week, you wrote down how much you had spent during that month. You wrote up-to-date how much you had spent during that month.

Q Each week you would get a month-to-date number?

A Yes.

Q And that would tell you how much you had spent?

A Yes.

Q And if it was more than the amount within the range he had set for your circumstance, then you had to account specifically to the mission president?

A What you had spent it on, yes.

Q Do you know what the term "per diem" means?

A Pardon?

Q Are you familiar with the term "per diem"?

A No.

Q That means an amount of money per interval of time. And I think probably it means per day. But what they said is, if you kept your expenditures to a certain amount, you were allowed some discretion, but they supervised you very closely if you went above that amount each month?

A They supervised it closely, yes.

Q Did you have any concern of what would happen if your father stopped providing you with money while you were on your mission?

[43] A Did I have a concern?

Q I don't assume that you stayed up nights worrying about the fact that your father would not provide the money that you were expecting?

A I worried at the end of the month as to whether I would be able to go out and buy food, yes. But I knew I had so much money coming in a month, and I couldn't

write home and say, "I need more money," because I knew I was putting my father out.

Q And was the amount he sent you each month related to the amount which the mission president had requested?

A Yes. It fell in that category of the maximum and minimum amount.

Q Depending on where you had been assigned, and in accordance with the mission rules?

A Yes.

Q He was sending you a certain amount—well, I guess what I was asking is, if your father had been, for some reasons that you don't know, if he had been suddenly disabled, would the Church have provided money for your mission if your parents had suddenly become unable to provide money for your mission?

A I imagine they would; I dont' know for sure.

• • • •